

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CRIMINAL NO. 04-10303-RWZ

UNITED STATES OF AMERICA

v.

RASHAUN SCOTT

ORDER  
June 18, 2010

ZOBEL, D.J.

After a trial by jury, defendant Rashaun Scott was convicted on a single count of violating 18 U.S.C. § 922(g), Felon in Possession of a Firearm. The judge sentenced defendant to imprisonment for 235 months after finding that he was a career offender. Defendant has moved pursuant to 28 U.S.C. § 2255 for relief from that sentence. He invokes the right to trial by jury in the Sixth Amendment and asserts that the sentencing court did not have constitutional authority to decide the facts underlying its determination of his career offender status. He further argues that Almendarez-Torres v. United States, 523 U.S. 224 (1998), which expressly upholds a trial judge's determination of the defendant's prior record for sentencing purposes, was "disavowed" by a series of subsequent decisions, United States v. Booker, 543 U.S. 220 (2005); Blakely v. Washington, 542 U.S. 296 (2004); and Apprendi v. New Jersey, 530 U.S. 466 (2000).

However, defendant's quotation from Blakely in his reply brief clearly and

expressly preserves for the judge the determination of defendant's prior record. Such has also been the consistent rule in the First Circuit. United States v. Charlton, 600 F.3d 43, 54-55 (1st Cir. 2010); United States v. LaFortune, 520 F.3d 50, 58 (1st Cir. 2008); United States v. Richards, 456 F.3d 260, 262 (1st Cir. 2006).

The motion for vacation of the sentence is denied.

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June 18, 2010

DATE

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/s/Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE